



## **Staff Report**

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RESOLUTION APPROVING A PERMANENT ENCROACHMENT AGREEMENT FOR REPLACING AN EXISTING RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 2216 CORONET BOULEVARD (APN044-042-070)

Honorable Mayor and Council Members:

### **Summary**

The property owners of 2216 Coronet Boulevard want to enter into a Permanent Encroachment Agreement with the City for a retaining wall within the public right-of-way. They have constructed a new masonry retaining wall in the same location to replace a failing former retaining wall. A resolution is provided for Council consideration approving the encroachment with conditions.

### **Background**

In September 2004, staff issued a stop work notice to the owner at 2216 Coronet Boulevard for the construction of a new retaining wall on city right-of-way without a permit. The owner disputed that the retaining wall is within private property and hired an independent surveyor to verify the location of the wall. The results of the survey show that the new retaining wall and also an existing guard rail encroaching upon city right-of-way.

There is a very steep drop off between the house at 2216 Coronet and the street. The house was developed in the 1960s with an acutely angled driveway running nearly parallel to the property boundary/right-of-way line to reduce the slope of the driveway. The retaining wall is needed to stabilize the steep slope and support the driveway. The guard rail that runs along the driveway edge at the top of the retaining wall is a safety feature for people and vehicles using the driveway.

The property owners at 2216 Coronet Boulevard have applied for a Permanent Encroachment Agreement to replace the existing retaining wall within the public right-of-way. The new masonry retaining wall encroaches approximately thirteen feet upon the public right-of-way. It has been placed back of the street gutter in the same location as the former failing retaining wall. The owner does not intend to replace the existing guard rail.

## **Discussion**

The City Council adopted Ordinance Number 994 regulating encroachments into the public right-of-way on December 9, 2003. As codified in Section 22-6 of the Municipal Code, this ordinance gives the City Council the sole authority to issue permits for major or unusual encroachments including aboveground structures such as retaining walls, fences, poles, and awnings. This class of encroachment is commonly known as a “permanent encroachment,” although the City retains the right to revoke the permit and require removal if the structure is not being used or if it interferes with planned public improvements. Section 22-6(b) requires the Director of Public Works to review all major encroachment applications and if he finds the applications is in accordance with the code, recommend approval with such conditions as he deems necessary to protect the health and safety of the public and protect the City.

The City Council may choose to approve or to conditionally approve the application only if it finds that there is some public benefit for the encroachment. Section 22-7(e)(1) provides examples of acceptable public benefits including added on-street parking, added sidewalk, safer sight distance, reduced amount of grading, and replacement or improvement of an existing undesirable physical condition.

When Council adopted Ordinance 994, it gave staff direction that it would generally find public benefit in applications to replace existing retaining walls in the public right-of-way. Council would also allow reconstruction of fences atop existing retaining walls. Council would generally not find public benefit in applications for new retaining walls or fences when the purpose of these structures was to increase the usable yard area of a private residence or business. The staff recommendation for this application is in accordance with Council’s direction.

Staff has reviewed the encroachment application for the retaining wall at 2216 Coronet Boulevard and found it to be in compliance with the City Code. The public right-of-way along 2216 Coronet Boulevard extends approximately thirteen feet beyond the edge of street pavement. Staff believes that replacing the existing retaining wall will fulfill the obligation to provide the required public benefit by correcting an undesirable physical condition to stabilize a slope adjacent to city right-of-way. The new masonry retaining wall is installed at the same location as the existing wall.

In accordance with the Municipal Code 22-6(d), notice was sent to all affected properties within 300 feet of the project location that the City Council would be considering the item on December 13th. The applicant has paid the \$1,950 encroachment permit fee to cover staff time to process the Permanent Encroachment Agreement.

**Fiscal Impact**

There is no fiscal impact to the City. All costs are the property owner's responsibility.

**Public Contact**

Public contact included posting of City Council agenda and mailing notices to the properties within a 300-foot radius.

**Recommendation**

It is recommended that the City Council adopt the attached resolution approving, with conditions of approval, a Permanent Encroachment Agreement for replacement of a retaining wall within the public right-of-way at 2216 Coronet Boulevard.

**Alternatives**

1. Adopt a resolution denying the approval of the Permanent Encroachment Agreement.
2. Refer back to staff for more information.

**Attachments**

- A. Resolution to approve agreement
- B. Resolution to deny agreement
- C. Site photos - Council only
- D. Exhibit A – Aerial of Location

Respectfully submitted,

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Gilbert Yau, PE  
Senior Civil Engineer

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Raymond E. Davis III, PE, PTOE  
Director of Public Works

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Jack Crist  
Interim City Manager

**Staff Contact:**

Gilbert Yau, Senior Civil Engineer  
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**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING  
A PERMANENT ENCROACHMENT AGREEMENT FOR REPLACING AN EXISTING  
RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT  
2216 CORONET BLVD (APN 044-042-070)**

**WHEREAS**, the City of Belmont is authorized by Municipal Code Sec. 22-6 to issue encroachment permits for construction of structures in the public right-of-way; and,

**WHEREAS**, the property owners of 2216 Coronet Boulevard have applied for a Permanent Encroachment Agreement to replace an existing retaining wall within the public right-of-way; and,

**WHEREAS**, the Belmont City Council has made the following findings required by Municipal Code Sec. 22-6(e) for approval of a permanent encroachment agreement:

- (1) There is a public benefit to the encroachment as the new masonry retaining wall replaced a deteriorated wall and improved the existing undesirable physical condition; and,
- (2) The encroachment will not unduly restrict the public right-of-way or public water course for other typical uses; and,
- (3) The City will be duly protected from liability for injury to persons and property; and,
- (4) The required bonds will guarantee the faithful performance of all conditions and requirements specified in the encroachment agreement.

**WHEREAS**, approval of this permanent encroachment agreement is subject to the following conditions:

- (1) The retaining wall shall be constructed according to the approved plans unless otherwise approved by the Director of Public Works and be included as part of the project; and,
- (2) The retaining wall shall be constructed in accordance with Municipal Code Section 9-47, "Retaining wall design;" and,
- (3) The property owners shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- (4) The property owners shall be responsible for any restoration required as a consequence of work authorized by the City of Belmont within the public right-of-way; and,
- (5) The applicant agrees to begin and complete said improvements to the City's satisfaction within 180 calendar days from and after the passage date of this Council Resolution approving this agreement; and,

**WHEREAS**, the structures built in connection with this agreement shall be constructed in accordance with City standards and with the benefit of a Construction Inspection Permit to provide for inspection of said construction, issuance of which is hereby conditionally approved,

subject to the payment of inspection fees and posting of required surety to the Department of Public Works.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Belmont:

- (1) Finds the Permanent Encroachment Agreement application in compliance with the City code; and,
- (2) Approves the Permanent Encroachment Agreement with Michael C. and Sausha M. Polentz, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the retaining wall within the public right-of-way at 2216 Coronet Boulevard as described above and as shown on the attached exhibits and its continuing maintenance by the property owners; and,
- (3) Authorizes the Interim City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont; and,
- (4) Authorizes the City Clerk to file said Agreement with the County Recorder.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on December 13, 2005 by the following vote:

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
CLERK of the City of Belmont

APPROVED:

\_\_\_\_\_  
MAYOR of the City of Belmont

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT DENYING A  
PERMANENT ENCROACHMENT AGREEMENT FOR REPLACING AN EXISTING  
RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT  
2216 CORONET BLVD (APN 044-042-070)**

**WHEREAS**, the City of Belmont is authorized by Municipal Code Sec. 22-6 to issue encroachment permits for construction of structures in the public right-of-way; and,

**WHEREAS**, the property owners of 2216 Coronet Boulevard have applied for a Permanent Encroachment Agreement for construction of a new masonry retaining wall in the public right-of-way; and,

**WHEREAS**, the Belmont City Council has considered the application and finds it cannot make the following findings required by Municipal Code Sec. 22-6:

- (1) There is a public benefit derived from the retaining wall encroachment; and,
- (2) The encroachment will not restrict the public right-of-way for other typical uses.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** that the Belmont City Council denies the request for a Permanent Encroachment Agreement to construct a retaining wall within the public right-of-way at 2216 Coronet Boulevard.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on December 13, 2005 by the following vote:

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
CLERK of the City of Belmont

APPROVED:

\_\_\_\_\_  
MAYOR of the City of Belmont